

## **STATUS OF AGRICULTURAL PRESERVATION LEGISLATION**

### ***By George Towne and Liz Arasim, Legislative Analysts***

For many years, people have expressed concern regarding the continuing loss of farmland to residential, industrial, and commercial uses. To address this issue, the Senate Agricultural Preservation Task Force was created in the spring of 1999. The Task Force was asked to examine the condition of agriculture in Michigan, identify the challenges and threats it faces, and develop recommendations designed to meet those challenges and threats. In September 1999, the Task Force produced a report stating that the farm sector is in the worst condition it has been in since the mid-1980s; prices for many commodities are as low as they have been in decades; few young people are entering agriculture; and economic pressures on farmers and processing industries are causing agricultural resources, including land, to be removed from farm production. The report concludes that the fundamental cause of these problems is low profits, and that policies designed to address the issues facing agriculture should focus on profitability. The report lists specific recommendations for State action, including reducing taxes, developing new tax credits and enhancing current credits, and protecting farms against certain State and local regulations. Following is a description of legislation that has been enacted, and proposed but not yet enacted, in response to the concerns and recommendations.

#### **Enacted and Enrolled Legislation**

**Assessment Cap.** Currently, under Article 9, Section 3 of the State Constitution, annual assessment increases on each parcel of property (adjusted for additions and losses) are limited to the lesser of 5% or the rate of inflation. When property is subsequently transferred (as defined by law), the assessed value reverts to 50% of true cash value (the State equalized valuation, or SEV). As a result of the cap, each parcel has two values: the taxable value, which reflects the parcel's capped value and is the basis upon which taxes are levied; and the SEV, which is a measure of the value of the property on the open market. Thus, in an area where the value of property rises faster than the rate of inflation or 5% per year, a parcel's taxable value will be lower than its SEV, and this discrepancy will grow larger each year. When the property is transferred, the new owner must pay taxes based upon the property's SEV. The sudden increase in property taxes can be costly for those purchasing farm property, because such sales usually involve substantial tracts of valuable land. The Task Force recommended that the State address this problem by maintaining the assessment cap on agricultural property when it is transferred. Public Act 260 of 2000 (Senate Bill 709) amended the General Property Tax Act to keep the assessment cap on transferred qualified agricultural property if the property remains in agricultural use. If the property ceases to be used for agriculture, it will be assessed based upon its SEV.

As a further financial incentive, Public Act 261 of 2000 (Senate Bill 1246) provides for a recapture tax on transferred qualified agricultural property that is converted by a change in use so that it is no longer qualified agricultural property. The tax recaptures any property tax benefit (for up to seven years) that a farmer realized as a result of keeping land in agricultural use. Revenue from the tax will be placed in the Agricultural Preservation Fund (created by Public Act 262 of 2000--House Bill 5780) for grants that local governments may use to purchase "agricultural conservation easements"; that is, conveyances in which the owner relinquishes to the public in perpetuity his or her development rights and makes a covenant not to undertake development.

**Right to Farm.** The Right to Farm Act, enacted in 1981, is designed to protect farmers from lawsuits brought by neighboring residents who object to the noise, odor, and dust that accompany typical farming activities. Under the Act, a farm or farm operation may not be found to be a public or private nuisance if the farm meets certain criteria, such as conformity to generally accepted agricultural and management practices (GAAMPS). The Act, however, did not preclude local units from adopting ordinances to regulate farming. This meant that a local unit could adopt regulations that had the effect of hampering farm operations, such as restrictions

on the number of animals per acre, prohibitions against odors, or noise level restrictions. Many farmers complained that this situation prevented them from expanding, increased costs for compliance, and exposed them to lawsuits from nearby residents if the farmers were found to be in violation of an ordinance. In response, the Legislature enacted Public Act 261 of 1999 (Senate Bill 205), which prohibits local units from enacting or enforcing ordinances that conflict with the Act or GAAMPS, and requires the Agriculture Commission to adopt GAAMPS for site selection and odor controls at new and expanding animal livestock facilities.

Captive Cervidae Farms. The State has experienced a growth in the sector of the agricultural industry in which deer and elk are raised for food and other byproducts. Deer and elk production is an example of niche marketing, which involves the production of a commodity that has limited demand but for which consumers are willing to pay a premium price. For some farmers, production of such a commodity can improve the profitability of their farming operations. Since deer and elk operations apparently are similar to traditional livestock farms, deer and elk farmers requested that the regulation of these operations be transferred from the Department of Natural Resources (DNR) to the Department of Agriculture.

Public Act 190 of 2000 (House Bill 4427) created the "Privately Owned Cervidae Producers Marketing Act", which is to be administered by the Department of Agriculture in consultation with the Departments of Natural Resources and Environmental Quality. The Act states that a cervidae livestock operation is an agricultural enterprise that is considered to be part of the State's farming and agricultural industry. A "cervidae livestock operation" is an operation that contains one or more privately owned cervidae species (deer, elk, moose, reindeer, and caribou) involving the production, growth, propagation, use, harvesting, transportation, exportation, importation, or marketing of cervidae species or products under an appropriate registration.

In addition, under the Natural Resources and Environmental Protection Act (NREPA), the DNR may regulate the taking or killing of all fish, game, fur-bearing animals, and game birds protected by laws of the State. Public Act 191 of 2000 (House Bill 4428) amended the NREPA to exempt privately owned cervidae species located on a registered cervidae livestock facility or involved in a registered cervidae livestock operation under the Privately Owned Cervidae Producers Marketing Act. Public Act 191 also amended the definition of "game" to exempt privately owned cervidae species located on a registered cervidae livestock facility. Public Acts 190 and 191 will take effect June 1, 2001.

Agricultural Processing Renaissance Zones. According to the Senate Agricultural Preservation Task Force, the processing industry is an important area of the farm sector and the Michigan economy. Loss of processors can restrict access to markets for farmers and employment for workers, and the State had lost its only turkey and hog processing plants. To assist these businesses, representatives of the agricultural industry suggested that "renaissance zones" should be created for agricultural processing facilities. Under the Michigan Renaissance Zone Act, regions in the State are designated to be virtually tax free for any business or resident currently in, or moving into, a zone.

Public Act 259 of 2000 (Senate Bill 1251) amended the Michigan Renaissance Zone Act to permit the State Administrative Board, upon recommendation of the Board of the Michigan Strategic Fund, to designate up to 10 renaissance zones for agricultural processing facilities in one or more cities, villages, or townships that consent to the creation of a renaissance zone for an agricultural processing facility within their boundaries. The board may not designate a zone after December 31, 2002. Under Public Act 259, "agricultural processing facility" means one or more facilities or operations that transform, package, sort, or grade livestock or livestock products, agricultural commodities, or plants or plant products into goods that are used for intermediate or final consumption, including goods for nonfood use, and surrounding property.

Tax Credit or Funding for an Ethanol Plant. The promotion of value-added enterprises, such as operations that process corn into ethanol fuel, is considered one way to increase agricultural income and profits. The Task Force pointed out that Michigan is the only state in the Midwest that does not have an ethanol plant.

Enrolled Senate Bill 1340 proposes the "Julian-Stille Value-Added Act" to create the "Agricultural Development Fund", which would be administered by the Department of Agriculture to make grants to qualified applicants who submitted proposals demonstrating the feasibility for development of value-added agricultural processing and production ventures. The Treasury Department would be required to deposit into the Agricultural Development Fund at least \$5 million of the revenue available in the "Michigan Clean Air Fund" (which would be created by the bill and funded by deposits from electric and gas utilities). Enrolled Senate Bill 1340 is awaiting the Governor's signature.

### **Proposed Legislation**

Property Taxes Based on Agricultural Use. Under Article 9, Section 3 of the State Constitution, the Legislature must provide for the determination of the true cash value of real and personal property. This process results in property assessments that are based on a determination of what a parcel would bring on the open market if sold (thus, its highest and best use), rather than on its current use. This can be particularly problematic for farmland. For instance, a farm near a fast-growing area may produce income to the farmer that is comparable to the income of a same-sized farm in another area, but because of the first farm's location, its acreage may be valued substantially higher than that of the second farm, and thus result in higher property taxes. The Task Force recommended that the property taxes on a parcel of agricultural property be based on its current use, not on the property's highest and best use.

To assess farm property based upon something other than its highest and best use would require an amendment to the State Constitution. Senate Joint Resolution M and House Joint Resolution R each proposed to amend the State Constitution to specify that qualified agricultural property would have to be assessed based upon agricultural use value. Neither resolution, however, was reported from its house of origin. If such a resolution is adopted in the future, it must be submitted to the voters for approval.

Personal Property Tax. The Tax Force recommended that farmers' cooperatives be exempted from the personal property tax, in order to increase the profits of farmers. Under the Internal Revenue Code, farmers' cooperatives are farmers', fruit growers', or similar associations organized and operated on a cooperative basis for the purpose of marketing the products of members or other producers and returning to them the proceeds of sales; or for the purpose of purchasing supplies and equipment for the use of members. Under the General Property Tax Act, items of personal property (e.g., farm implements) used in agricultural operations, excluding retail sales and food processing operations, are exempt from taxation. Property used in agricultural operations includes machinery used to prepare a crop for market, as defined in statute. The courts have determined that since a farm cooperative is not a farmer, however, the machinery used by a cooperative's members to prepare a crop does not qualify for the exemption. Senate Bill 830 would exempt from taxation the personal property of a farmer's cooperative, if the property would be exempt if owned by a member of the cooperative. Senate Bill 830 has passed the Senate and is currently before the House.

Credit for Agricultural Rent. The Task Force recommended that a tax credit be created for older farmers who rent their land to younger farmers. Senate Bill 780 would allow a State income tax credit for part of the rent received by a qualified taxpayer who owns agricultural assets that he or she rents to a beginning farmer or livestock producer. The bill was referred to the Senate Finance Committee.

Development Rights Agreement. For more than 25 years, Michigan has relied on development rights agreements as a method of preserving farmland by reducing the amount of property taxes that farmers pay on their agricultural land. Farmers who enroll in this program receive a tax credit equal to property taxes that exceed 7% of household income or adjusted business income. In exchange for the tax credit, they must keep their land in agricultural production. Since Michigan voters approved ballot Proposal A in 1994 as part of a school finance reform package, average property taxes on homestead and agricultural property have been reduced by almost one-half, even though a new State property tax of six mills for school operations is levied on all property subject to the property tax. Because of the significant decline in property taxes,

however, farmers who enrolled their land in a development rights agreement apparently have less of a financial incentive to renew their agreements.

Senate Bill 763, as passed by the Senate, would amend Part 361 (Farmland and Open Space Preservation) of the NREPA to reduce the income threshold for an owner of farmland to participate in a farmland development rights agreement. Under the bill, a person could claim an income tax credit, or a single business tax credit, for the amount by which property taxes on land and structures used in a farming operation exceeded 3.5% (rather than 7%) of household income, or adjusted business income. The bill is currently before the House of Representatives.

Agricultural Security Zones. The Task Force recommended that agricultural security zones be created as buffers to protect farmers against local ordinances that the agricultural industry considers to be restrictive.

Senate Bill 29 would add Part 362 (Agricultural Security Areas) to the NREPA to permit the owner of at least 250 contiguous acres of farmland to apply for the creation of an agricultural security area (ASA) that included that property. Under an ASA agreement, there would be no development of the land, as specified in the bill, for 10 to 25 years. The development rights restricted under an ASA agreement would be exempt from ad valorem taxation. Local governments within an ASA could not enact ordinances that would restrict farm structures or a farm operation conducted using generally accepted agricultural and management practices within the ASA, unless the restrictions bore a direct relationship to the public health or safety. A local governing body also would have to consider the impact of proposed developments on adjacent agricultural operations in an ASA. Senate Bill 29 was referred to the Senate Committee on Farming, Agribusiness and Food Systems.

Agricultural Processing. As noted above, the food processing industry is important to agriculture in Michigan, because the lack of processors in the State restricts access to markets for farmers and can increase their production costs (for shipping). In 1998, the State lost its last turkey processing facility. Faced with the prospect of shipping their entire annual production of turkeys to out-of-State facilities, 15 of the major turkey growers formed a co-op to develop their own processing facility in Wyoming, Michigan. The cooperative's plant began receiving birds for processing in March 2000. It has been suggested that the State provide some assistance to help the turkey industry remain viable in Michigan. Senate Bills 1271 and 1272, as passed by the Senate, would allow the State income taxes of the employees at the facility to be captured and placed in a fund, administered by the Department of Treasury, to be used for making grants to help develop the facility. The bills have been referred to the House Tax Policy Committee.